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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

Notification of Inflation Adjustments for Civil Money Penalties

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notification of Monetary Penalties 2019.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is providing notice of its maximum civil money penalties as adjusted for inflation. The inflation adjustments are required to implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: The adjusted maximum amount of civil money penalties in this document are applicable to penalties assessed on or after January 1, 2019, for conduct occurring on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Chief Counsel's Office, (202) 649-5490, or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION:

This document announces changes to the maximum amount of each civil money penalty (CMP) within the OCC's jurisdiction to administer to account for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990

Adjustment Act),¹ as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Adjustment Act).² Under the 1990 Adjustment Act, as amended, federal agencies must make annual adjustments to the maximum amount of each CMP the agency administers. The Office of Management and Budget (OMB) is required to issue guidance to federal agencies no later than December 15 of each year providing an inflation adjustment multiplier (*i.e.* the inflation adjustment factor agencies must use) applicable to CMPs assessed in the following year. The agencies are required to publish their CMPs, adjusted pursuant to the multiplier provided by OMB, by January 15 of the applicable year.

To the extent an agency has codified a CMP amount in its regulations, the agency would need to update that amount by regulation. However, if an agency has codified the formula for making the CMP adjustments, then subsequent adjustments can be made solely by notice.³ In 2017, the OCC codified the formula for making CMP adjustments in its rules.⁴ In 2018, the OCC published a final regulation to remove the CMP amounts from its regulations, while updating those amounts for inflation through the notice process.⁵

On December 14, 2018, the OMB issued guidance to affected agencies on implementing the required annual adjustment, which included the relevant inflation

¹ Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890, codified at 28 U.S.C. 2461 note.

² Pub. L. 114-74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599, codified at 28 U.S.C. 2461 note.

³ See OMB Memorandum M-18-03, “Implementation of the 2018 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015” at 4, which permits agencies that have codified the formula to adjust CMPs for inflation to update the penalties through a notice rather than a regulation.

⁴ 82 FR 8584 (January 27, 2017).

⁵ 83 FR 1517 (January 12, 2018) (final rule); 83 FR 1657 (Jan. 12, 2018) (2018 CMP Notice).

multiplier.⁶ The OCC has applied that multiplier to the maximum CMPs allowable in 2018 for national banks and federal savings associations as listed in the 2018 CMP notice to calculate the maximum amount of CMPs that may be assessed by the OCC in 2019.⁷ There were no new statutory CMPs administered by the OCC during 2018.

The following charts provide the inflation-adjusted CMPs for use beginning on January 1, 2019, pursuant to 12 CFR 19.240(b) and 109.103(c) for conduct occurring on or after November 2, 2015:

⁶ The inflation adjustment multiplier for 2019 is 1.02522. See OMB Memorandum M-19-04, “Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjust Act Improvements Act of 2015” at 1 (Dec. 14, 2018).

⁷ Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the maximum amounts set forth in the OCC’s regulations in effect prior to the enactment of the 2015 Adjustment Act.

Penalties Applicable to National Banks

<u>U.S. Code Citation</u>	<u>Description and Tier (if applicable)</u>	<u>Maximum Penalty Amount (in Dollars)¹</u>
12 U.S.C. 93(b)	Violation of Various Provisions of the National Bank Act: Tier 1 Tier 2 Tier 3	10,067 50,334 2,013,399 ²
12 U.S.C. 164	Violation of Reporting Requirements: Tier 1 Tier 2 Tier 3	4,027 40,269 2,013,399 ²
12 U.S.C. 481	Refusal of Affiliate to Cooperate in Examination	10,067
12 U.S.C. 504	Violation of Various Provisions of the Federal Reserve Act: Tier 1 Tier 2 Tier 3	10,067 50,334 2,013,399 ²
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act: Tier 1 Tier 2 Tier 3	10,067 50,334 2,013,399 ²
12 U.S.C. 1818(i)(2) ³	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty: Tier 1 Tier 2 Tier 3	10,067 50,334 2,013,399 ²
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions: Per violation	331,174
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instrument for Transfers to Third Parties: Per violation	2,924
12 U.S.C. 1884	Violation of the Bank Protection Act	292
12 U.S.C. 1972(2)(F)	Violation of Anti-Tying Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty: Tier 1 Tier 2	10,067 50,334

¹ The maximum penalty amount is per day, unless otherwise indicated.

² The maximum penalty amount for a national bank is the lesser of this amount or 1 percent of total assets.

³ These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1693o, 1681s, 1691c, and 1692l.

<u>U.S. Code Citation</u>	<u>Description and Tier (if applicable)</u>	<u>Maximum Penalty Amount (in Dollars)¹</u>
	Tier 3	2,013,399 ²
12 U.S.C. 3110(a)	Violation of Various Provisions of the International Banking Act (Federal Branches and Agencies):	46,013
12 U.S.C. 3110(c)	Violation of Reporting Requirements of the International Banking Act (Federal Branches and Agencies): Tier 1 Tier 2 Tier 3	3,682 36,809 1,840,491 ²
12 U.S.C. 3909(d)(1)	Violation of International Lending Supervision Act	2,505
15 U.S.C. 78u-2(b)	Violation of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act: Tier 1 (natural person) – Per violation Tier 1 (other person) – Per violation Tier 2 (natural person) – Per violation Tier 2 (other person) – Per violation Tier 3 (natural person) – Per violation Tier 3 (other person) – Per violation	9,472 94,713 94,713 473,566 189,427 947,130
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements: First violation Subsequent violations	11,563 23,125
42 U.S.C. 4012a(f)(5)	Flood Insurance: Per violation	2,187

Penalties Applicable to Federal Savings Associations

<u>U.S. Code Citation</u>	<u>CMP Description</u>	<u>Maximum Penalty Amount (in Dollars)¹</u>
12 U.S.C. 1464(v)	Reports of Condition: 1 st Tier 2 nd Tier 3 rd Tier	4,027 40,269 2,013,399 ²
12 U.S.C. 1467(d)	Refusal of Affiliate to Cooperate in Examination	10,067
12 U.S.C. 1467a(r)	Late/Inaccurate Reports: 1 st Tier 2 nd Tier 3 rd Tier	4,027 40,269 2,013,399 ²
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act: Tier 1 Tier 2 Tier 3	10,067 50,334 2,013,399 ²
12 U.S.C. 1818(i)(2) ³	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty Tier 1 Tier 2 Tier 3	10,067 50,334 2,013,399 ²
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions: Per violation	331,174
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instruments for Transfers to Third Parties: Per violation	2,658
12 U.S.C. 1884	Violation of the Bank Protection Act	292
12 U.S.C. 1972(2)(F)	Violation of Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty: Tier 1 Tier 2 Tier 3	10,067 50,334 2,013,399 ²
15 U.S.C. 78u-2(b)	Violations of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act: 1 st Tier (natural person) – Per violation 1 st Tier (other person) – Per violation 2 nd Tier (natural person) – Per violation 2 nd Tier (other person) – Per violation	9,472 94,713 94,713 473,566

¹ The maximum penalty amount is per day, unless otherwise indicated.

² The maximum penalty amount for a federal savings association is the lesser of this amount or 1 percent of total assets.

³ These amounts also apply to statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1681s, 1691c, and 1692l.

<u>U.S. Code Citation</u>	<u>CMP Description</u>	Maximum Penalty Amount (in Dollars) ¹
	3 rd Tier (natural person) – Per violation 3 rd Tier (other person) – Per violation	189,427 947,130
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements: First violation Subsequent violations	11,563 23,125
42 U.S.C. 4012a(f)(5)	Flood Insurance: Per violation	2,187

Dated: December 18, 2018

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